

**REMARKS**

Claim 9 has been amended to resolve an issue raised by the Examiner under 35 U.S.C. 112, first paragraph.

Entry of the above amendment is respectfully requested.

**Certified Copies of Priority Documents**

On the Office Action Summary, the Examiner indicates that some of the certified copies of the priority documents have been received.

However, Applicants note that the Image File Wrapper in the PAIR system on the PTO website shows that all copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau on October 11, 2005.

Accordingly, Applicants respectfully request that the Examiner indicate in the next communication from the PTO that all copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau.

**Objection to Claim 11**

On page 2 of the Office Action, claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

**The Examiner's Position**

The Examiner asserts that present claim 10 recites a single compound as opposed to a genus of compounds. Further, the Examiner indicates that instant claim 11 attempts to further define the compound of 10, but instead redefines the phospholipid present in the composition, changing it from L- $\alpha$ -phosphatidyl ethanolamine to L- $\alpha$ -phosphatidyl ethanolamine dioleoyl.

**Applicants' Response**

In response, Applicants submit that claim 11 limits the scope of phosphatidyl ethanolamine of claim 10 (wherein the carbon numbers of two fatty acid moieties are unlimited) to a specific number, i.e., dioleoyl. Accordingly, Applicants submit that this objection has been overcome, and withdrawal of this objection is respectfully requested.

**Rejection under 35 U.S.C. 112, First Paragraph**

On page 3 of the Office Action, claim 9 is rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

In response, Applicants have amended claim 9 to delete the recitation "derivatives thereof". Accordingly, Applicants submit that this rejection is been overcome, and withdrawal of this rejection is respectfully requested.

**Obviousness Rejections**

On page 6 of the Office Action, claims 4-9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimomura et al. (JP-2001-157574 - see IDS and attached translation) in view of Johnsson et al. (Biophysical Journal 2001 80:313-323), Nishikawa et al. (Materials Research Society Symposium Proceedings 2002 724:N11.7.1-N11.7.6), and Maruyama et al. (Thin Solid Films 1998 327-329:854-856). Further, on page 7 of the Office Action, claims 4 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimomura et al. in view of Huang et al. (U.S. Patent No. 5,283,122), Nishikawa et al., and Maruyama et al.

In response, Applicants note initially that the Examiner relies on Johnsson and Huang for establishing the obviousness logic in that phosphatidyl ethanolamine dioleoyl (DOPE) forms an inverted hexagonal structure in aqueous solution.

However, Applicants submit that this fact cannot be applied for producing honeycomb-structure film of the present invention in the following reasons.

i) According to the present invention, the honeycomb structure can only be formed using hydrophobic organic solvent such as chloroform. The finding mentioned by the Examiner is in an aqueous solution, and it cannot be expanded to circumstances in a hydrophobic organic solution, since inter-molecular assembly of DOPE is expected to be completely different depending on the circumstances.

ii) According to the present invention, DOPE is added to a polymer solution for producing the honeycomb structure. This means that the circumstance of DOPE is quite different from the pure form as described in the cited reference.

Thus, Applicants submit that the present invention is not obvious over the cited art, and withdrawal of these rejections is respectfully requested.

### **Obviousness-Type Double Patenting Rejection**

On page 9 of the Office Action, claims 4-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3-6 of copending Application No 10/580029.

Since this obviousness-type double patenting rejection is provisional, Applicants defer responding at this time. However, Applicants note that per MPEP 804I.B.1., if a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining

## AMENDMENT UNDER 37 C.F.R. § 1.111

Application No.: 10/552,685

in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. Since the rejections under 35 U.S.C. 112, first paragraph, and 35 U.S.C. 103 are overcome as discussed above, and since this double patenting rejection would thus be the only rejection remaining in the present application (which is the earlier filed of the two pending applications), Applicants submit that the Examiner should withdraw the double patenting rejection and permit the present application to issue as a patent without a terminal disclaimer.

**Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



---

Bruce E. Kramer  
Registration No. 33,725

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: January 21, 2009